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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/901,979      | 07/10/2001  | Lutz Heur            | Bayer 8890.4-KGB    | 8954             |

27384 7590 03/20/2006

NORRIS, MCLAUGHLIN & MARCUS, PA  
875 THIRD AVENUE  
18TH FLOOR  
NEW YORK, NY 10022

EXAMINER

PRYOR, ALTON NATHANIEL

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1616

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**  
**After the Filing of an Appeal Brief**

Application No.

09/901,979

Examiner

Alton N. Pryor

Applicant(s)

HEUER ET AL.

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 16 February 2006 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.  
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☒ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☐ Other: Rejection of claims 9, 11, 12, and 15 under 35 USC 112 and 103(a) will be maintained for reason on record and reason as follows. Dr. Kugler's declaration of synergistic combinations of cyproconazole and propiconazole or tebuconazole is limited to ratios of actives shown in the declarations and is not indicative that the combination of actives will be synergistic at all ratios. For this reason Examiner disagrees that the data presented by Dr. Kugler supports the full range of the claims. Applicant is unable to claim these ratios since Applicant indicates no ratios of actives in the specification. To make such a claim would present a new matter issue.

Alton N. Pryor  
Alton Pryor  
Primary Examiner  
A.U. 1616